



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/48088/2013

THE IMMIGRATION ACTS

Given orally at Field House
On 29th September 2014

Determination Promulgated
On 8th October 2014

Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

MR JOE ALEXANDER ADEYEMI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Babatunde, Supreme Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the appellant, a citizen of Nigeria born on 22nd November 1953, against the determination of the First-tier Tribunal, Judge Fox, in Richmond on 25th June 2014, in which the Tribunal dismissed the appellant's application against the

decision of the respondent to cancel his leave to remain in the United Kingdom and refuse leave to enter.

2. The respondent's decision bears some scrutiny. It is dated 5th November 2013. The respondent was, according to this, satisfied that false representations were employed or material facts were not disclosed for the purpose of obtaining the appellant's leave to remain or that there had been such a change in circumstances since that leave was granted that it should be cancelled.
3. The decision records that the application which the appellant made purported that he made profits of £33,032 for the period between 1st January 2011 and 31st December 2011.

"The evidence you have provided were your accountant's letter and management accounts which enabled you to claim 35 points towards the 75 you are required to have been issued with a Tier 1 (General) visa. Whilst enquiries with HMRC have shown that you declared £12,776 which would indicate you have been operating a business I am not satisfied that the records are accurate for the following reasons."

There then follow various criticisms of the business records kept by the appellant.

4. The following paragraph is I consider worthy of setting out in full.

"When considering the evidence above I am not satisfied that you have kept an adequate record of your business accountants (sic) as you are unable to provide me with basic financial information relating to your business and you do not know if you would be able to produce any financial records at a later date. I am therefore satisfied that you have not provided your accountant with accurate records that would have enabled him to produce a true reflection of your business in the documents he provided for you to produce as evidence when making your application. I am satisfied that this is a misrepresentation of relevant facts on your part. I am also satisfied that your employment at the time of your current visa issue and to this date would not qualify as highly skilled and is not in keeping with the issue of Tier 4 (General) Migrant. I therefore cancel your visa under paragraph 321A(i) and (ii) of the Immigration Rules."

5. Paragraph 321A so far as material reads as follows:

"The following grounds for the cancellation of a person's leave to enter or remain which is in force on his arrival in, or whilst he is outside, the United Kingdom apply;

- (1) there has been such a change in the circumstances of that person's case since the leave was given that it should be cancelled; or
- (2) false representations were made or false documents were submitted (whether or not material to the application, and whether or not to the holder's knowledge), or material facts were not disclosed, in relation to the application for leave or in order to obtain documents from the Secretary of State or a third party required in support of the application."

6. The judge in the present case heard oral evidence from the applicant. He was asked about the asserted discrepancy in the figures provided by his accountants. In the bundle we see the letters to which the respondent referred in her notice of decision. The letter of 5th January 2012 written by Fanla & Co Accountants and Consultants of London SW9 and produced in connection with the application for leave states that the appellant had the following "income and tax details from 01 January to 31 December 2011". The net profit in respect of that period was said to be £33,032. However, a letter from the same firm of accountants dated 13th March 2014 addressed "to whom it may concern" (and intended for HMRC) stated that in respect of the period from 1st January to 5th April 2012 the net profit was for the tax year 5th April 2012 £12,776.

7. The judge heard evidence from the appellant in this regard and I have been provided with a typed transcript of what the judge heard for which I am grateful to Mr Babatunde. The Home Office representative said:

"Look at the second page of the document by HMRC. The money you claimed to have earned is different from the one you declared to HMRC on enquiry."

The appellant:

"I declared £33,000 to the Home Office when bringing in my application. The net profit of £12,000 was declared later to HMRC."

8. What the judge made of this is to be seen at paragraph 31 of his determination, where he said:

"I do not accept that the appellant's evidence relates to different accounting periods which are meant to account for the discrepancy in the evidence. The appellant provided oral evidence that he answered questions in the expectation that his answers would satisfy the Immigration Rules."

9. And then at paragraph 33 we find this:

"It is reasonable to expect an individual to answer questions with a view to providing an accurate account of his circumstances. When the evidence is considered in the round it is reasonable to conclude that the appellant sought to mislead the respondent at the interview and took active steps to withhold material information about his economic activities in the UK."

10. Permission was granted on the basis that the judge may have erred in relation to the findings that he made concerning the nature of the Highly Skilled Migrant Programme. I find that I do not need to deal with those issues because the findings that the judge made in respect of the letters to which I have referred and the evidence relating to them are, despite Mr Babatunde's assertion to the contrary, unarguably sound.

11. The attempt to explain the gross discrepancy in the letters by saying that they relate to different periods is, with respect, wholly misconceived. The period covered by both of the letters covers the calendar year 2011. Indeed, the letter of 30th March 2014 is remarkable in giving a far lower net profit for a period which is in fact longer than that calendar year, since it extends to April 2012.
12. On the basis of the record of what was said at the hearing, it appears to me that the judge was unarguably entitled to conclude that the appellant in his oral evidence indicated that he answered the questions regarding his application for leave, in the expectation that his answers would satisfy the Immigration Rules. Mr Babatunde reinforces that impression when he says that the earlier letter was written in order to obtain leave to remain and the later letter was written for a different purpose.
13. With respect, that is entirely unsatisfactory. It is entirely plain that the judge was entitled to find for the reasons that he gave that there had indeed been a misrepresentation and to find as he did that the respondent, who bore the burden of showing that, had discharged it to the requisite standard.
14. The documentation complained of was the letter written to the Secretary of State by the accountants giving a wholly inaccurate description of the profits of the business, as evidenced by the later letter.
15. For those reasons I find that the judge committed no error of law in finding that the relevant requirements of paragraph 321A of the Immigration Rules had been met on the part of the respondent and, accordingly, in dismissing the appellant's appeal. This appeal to the Upper Tribunal is accordingly dismissed.

Signed

Date

Upper Tribunal Judge Peter Lane